
September 30, 2017

Ron McClean
Facility Coordinator
Fairhaven Business Park
1900 Bendixsen Street
Fairhaven, CA 95546

Tim Callison
Sequoia Investments X, LLC
PO Box 1028
Eureka, CA 95502

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Sequoia Investments X, LLC, dba Fairhaven Business Park:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Fairhaven Business Park facility located at 1900 Bendixsen Street in Fairhaven, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this 60-day Notice of violations ("Notice") is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California North Coast Regional Water Quality Control Board ("RWQCB").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA, and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into the Humboldt Bay, and the Pacific Ocean.

Fairhaven Business Park (the “Discharger”) is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System (“NPDES”) permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the North Coast RWQCB Water Quality Control Plan or “Basin Plan”.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

The Discharger filed a Notice of Intent (“NOI”) on May 6, 2015, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification (“WDID”) number 1 121021905.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive, and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the “General Permit”) relating to industrial activities at the Facility.

II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Facility Operations

Fairhaven Business Park is a mixed use, industrial facility that contains several large buildings; acres of sand, concrete, paved, and vegetated surfaces; and other industrial infrastructure. Currently, roughly 80 acres of the 200-acre site has been developed and has impermeable surfaces.

Operations at the Facility include Shitake Mushroom and Oyster farming, Sawdust and Shavings, and Wood Product Manufacturing, Printing, Fertilizer Mixing, General Freight Trucking and Loading, Warehousing and Storage, Truck Repair and Maintenance, Fuel Oil Merchant Wholesalers. Fairhaven’s primary business is FoxFarm, in the Fairhaven Facility, which is covered under Standard Industrial Code (“SIC”) 2875 - Fertilizers, Mixing only.

Site operations take place primarily outdoors on a site that slopes towards storm drains which discharge directly to Humboldt Bay, which is in proximity to the Facility. Because the real

property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice discharge directly to Humboldt Bay, which is listed for water quality impairment on the most recent 303(d)-list for dioxin toxic equivalents and polychlorinated biphenyls (PCBs).

B. Fairhaven Business Park's Specific Violations

1. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice considering technological availability and economic practicability and achievability.

Fairhaven Business Park has violated and continues to violate the terms and conditions of the General Permit by failing to implement minimum and/or advanced BMPs that utilize BAT and BCT to control the discharge of pollutants in storm water at the Facility.

On July 1, 2016, the Discharger was accelerated to Level 1 Status pursuant to Section XII.C of the General Permit, for exceedances of Iron, and Total Suspended Solids ("TSS"). Pursuant to the General Permit, the Facility was evaluated and a Level 1 Exceedance Response Evaluation Report was completed and certified on December 29, 2016.

The December 2016, evaluation completed by Patrick Barsanti of SHN Engineers and Geologists noted the following issues at the site:

1. During building construction that had taken place during the fiscal year, materials and construction debris had been placed within the yard area that drained to the sample outfall;
2. Deficiencies in the implementation of existing BMPs (in the Facility Storm Water Pollution Prevention Plan ("SWPPP")) in at least the following areas: Waste Management Practices, Good Housekeeping, Employee Training, Overhead coverage, Inspections; and
3. A representative sample of the Facility's storm water run-off could not be collected due to backup of the system at the associated discharge area (POW-1) during high tides.

As a result of number 3, above, the Facility sampling location was moved from the

POW-1 location to drainage inlet number 1 (D1-1), which receives run-off from the more active portions of the Facility.

On July 1, 2017, the Discharger was accelerated to Level 2 Status pursuant to Section XII.D of the General Permit which provides as follows: “A Discharger’s Level 1 status for any given parameter shall change to Level 2 status if sampling results indicate an NAL exceedance for that same parameter while the Discharger is in Level 1.” The acceleration to Level 2 status was precipitated by average levels of Iron, and TSS from the Discharger’s sampling results taken during Fiscal Year 2016-2017; specifically, on October 24, 2016, December 23, 2016, March 6, 2017, and April 7, 2017. (See Section 3 below)

The Discharger’s continued exceedances are further evidence of its failure to effectively implement minimum and advance BMPs. Specifically, the Discharger’s average Numeric Action Level (“NAL”) exceedances during the fiscal year 2015-16 that elevated them to Level 1 status were as follows: Total Suspended Solids – 223 mg/L and Iron - 10.2 mg/L. The Discharger’s average exceedances for the fiscal year 2016-17 were as follows: Total Suspended Solids – 705 mg/L and Iron 29.5 mg/L. Thus, the Discharger’s parameter exceedances for the Fiscal Year 2016-17 were roughly three times what they were the preceding fiscal year, after entering Level 1 status, hiring a professional engineer to do an evaluation and changing the sample location to an area that the professional stated would more accurately represent the parameter values in the Discharger’s storm water run-off samples. These more accurate samples indicated an average exceedance of nearly 30 times the allowable levels for Iron!

2. Failure to File a Complete Annual Report

Pursuant to Section XVI.B of the General Permit, the Annual Report must contain the following elements: (a) a Compliance Checklist that indicates whether the Discharger has complied with and addressed all applicable requirements of the General Permit; (b) an explanation for any non-compliance with requirements within the reporting year, as indicated in the Compliance Checklist; (c) an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year; and (d) the date(s) of the required Annual Evaluation.

Fairhaven’s Annual Report uploaded into the SMARTS database system on July 11, 2017, for the reporting year ending June 30, 2017, was nothing more than a cover page and was missing all the above required elements.

3. Discharges in Violation of the General Permit

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge

of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

Fairhaven Business Park's sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the General Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels ("NALs") for common parameters. A copy of Table 2 is included with this Notice.

Fairhaven Business Park's storm water analyses as indicated below contained levels for tested parameters in excess of Annual or Instantaneous NAL levels. The discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations.

Date of Sample Collection	Drainage Collection Point	Parameter	Concentration in Discharge (mg/L)	NAL Annual/ Instantaneous Value (mg/L)
03/25/14	POW-01	TSS	240	100/400
12/11/15	POW-01	Iron	17.0	1.0
12/11/15	POW-01	TSS	390	100/400
12/11/15	POW-01	Zinc	0.40	0.26
01/28/16	POW-01	TSS	170	100/400
01/28/16	POW-01	Iron	8.0	1.0
04/14/16	POW-01	TSS	110	100/400

Date of Sample Collection	Drainage Collection Point	Parameter	Concentration in Discharge (mg/L)	NAL Annual/Instantaneous Value (mg/L)
04/14/16	POW-01	Iron	5.5	1.0
10/24/16	D1 #1	TSS	240	100/400
10/24/16	D1 #1	Iron	8.8	1.0
12/23/16	D1#1	TSS	320	100/400
12/23/16	D1#1	Iron	20.0	1.0
03/06/17	D1#1	TSS	2100	100/400
03/06/17	D1#1	Iron	80.0	1.0
03/06/17	D1#1	Zinc	1.4	0.26
03/06/17	D1#1	Phosphorus	3.1	2.0
04/07/17	D1#1	TSS	160	100/400
04/07/17	D1#1	Iron	9.2	1.0

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility's storm water discharges directly into the Pacific Ocean, via Humboldt Bay. During storm events, the discharges are highly likely to discharge to said waters. Potential pollutants from the Facility that may come in contact with storm water include the following: sediment and woody debris; grease and oil; petrochemicals; antifreeze and hydraulic fluid; soil, tire, and exhaust gas particulates; iron, zinc, lead, phosphorus and nitrates; and cleaning fluids.

The CWA requires that water bodies such as Humboldt Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of Humboldt Bay and its tributaries include agricultural supply, cold saltwater habitat, Native American culture, industrial service supply, migration of aquatic organisms, municipal and domestic water supply, navigation,

commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes significant habitat for listed rare and endangered species.

CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entity responsible for the alleged violations is Fairhaven Business Park (“the Discharger”), including its parent companies, owners, operators and employees responsible for compliance with the CWA.

IV. THE LOCATION OF THE VIOLATIONS

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Fairhaven Business Park’s permanent facility address of 1900 Bendixsen Street in Fairhaven, California, and includes the adjoining navigable waters of the Humboldt Bay and Pacific Ocean - both waters of the United States.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least March 25, 2014, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is the California Environmental Protection Association (“CEPA”).

To ensure proper response to this Notice, all communications should be addressed as follows:

Xhavin Sinha, Attorney for
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1645 Willow Street, #150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

VII. PENALTIES

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate in the Humboldt Bay and the Pacific Ocean. Members of CEPA use the Bay for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

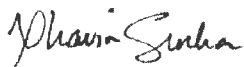
CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha

Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosure

Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units

PARAMETER	TEST METHOD	REPORTING UNITS	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH*	See Section XI.C.2	pH units	N/A	Less than 6.0 Greater than 9.0
Suspended Solids (TSS)*, Total	SM 2540-D	mg/L	100	400
Oil & Grease (O&G)*, Total	EPA 1664A	mg/L	15	25
Zinc, Total (H)	EPA 200.8	mg/L	0.26**	
Copper, Total (H)	EPA 200.8	mg/L	0.0332**	
Cyanide, Total	SM 4500-CN C, D, or E	mg/L	0.022	
Lead, Total (H)	EPA 200.8	mg/L	0.262**	
Chemical Oxygen Demand (COD)	SM 5220C	mg/L	120	
Aluminum, Total	EPA 200.8	mg/L	0.75	
Iron, Total	EPA 200.7	mg/L	1.0	
Nitrate + Nitrite Nitrogen	SM 4500-NO3- E	mg/L as N	0.68	
Total Phosphorus	SM 4500-P B+E	mg/L as P	2.0	
Ammonia (as N)	SM 4500-NH3 B+ C or E	mg/L	2.14	
Magnesium, total	EPA 200.7	mg/L	0.064	
Arsenic, Total (c)	EPA 200.8	mg/L	0.15	
Cadmium, Total (H)	EPA 200.8	mg/L	0.0053**	
Nickel, Total (H)	EPA 200.8	mg/l	1.02**	
Mercury, Total	EPA 245.1	mg/L	0.0014	
Selenium, Total	EPA 200.8	mg/L	0.005	
Silver, Total (H)	EPA 200.8	mg/L	0.0183**	
Biochemical Oxygen Demand (BOD)	SM 5210B	mg/L	30	

SM – Standard Methods for the Examination of Water and Wastewater, 18th edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

* Minimum parameters required by this General Permit

**The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.